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no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Court of Appeals Holds that Minor Child Was Resident of Two Households – Examine Your Files for Possible Claims for Pro-Rata Reimbursement!

By Mark Vanneste

Under Michigan's No-Fault Act, an otherwise uninsured occupant of a vehicle may be entitled to PIP benefits under the insurance policy of a relative domiciled in the same household. Typically, the question to be asked is whether a claimant was actually domiciled with a relative on the date of loss. Michigan courts have defined various factors that are to be evaluated to make a determination in regard to residence. In *Grange Insurance Company of Michigan v Farm Bureau General Insurance Company of Michigan*, _ Mich App _ (2012), the Court of Appeals held that the minor-claimant in question was domiciled with both of her divorced parents at the time of the accident.

The two seminal cases regarding domicile and residency under Michigan's No-Fault Act are *Workman v DAIIE,* 404 Mich 477 (1979) and *Dairyland v Auto-Owners*, 123 Mich App 675 (1983). These cases defined the factors used to determine residency. Factors include the claimant's mailing address, where the claimant keeps possessions, the address on the claimant's driver's license, the intent of the claimant, the relationship between the claimant and other members of the household, the existence of another place of lodging of the claimant, and whether the claimant is dependent on other members of the household for support. A court is supposed to weigh each of these factors, along with any others which may be relevant, based on the unique circumstances of a case. Historically, courts have analyzed these factors and others to compare and contrast various living arrangements and determine the claimant's residence.

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A claim for PIP benefits is often made by an otherwise uninsured individual under the provision of the No-Fault Act which provides coverage under a resident relative's insurance policy. This is especially true when dealing with minor claimants who do not own or drive a car.

Dual residency will not shift the entire burden of PIP benefits from one insurer to another. However, it may open the door for making, or being confronted with, a claim for reimbursement from the insurer of a divorced parent that may be of equal priority.

Many past claims by minors of divorced parents have been paid on the believed sole residency of the minor with the primary custodial parent. Carriers should immediately examine their current and past paid claims to identify cases where a claim for pro-rata reimbursement may now be made against the carrier of the parent with secondary custody of the minor claimant.

In *Grange v Farm Bureau*, some of the evidence pointed to the minor residing with her mother, and other evidence pointed to residency with her father. Instead of weighing the evidence to determine which household was in fact the minor-claimant's residence or finding a fact issue on the residency question for a jury to decide, the Court of Appeals ruled that she was domiciled in both households at the time of the accident and therefore each insurer was to contribute a pro-rata share of the PIP benefits to which she was entitled.

The Court was aware that the parents shared joint legal custody but that the mother had primary physical custody. Despite the voluminous case law on the topic of residency decided prior to *Grange*, the Court found that there was no reason that a minor child could not be domiciled in the homes of, and be a resident relative of, both of her parents at the same time.

In short, the panel concluded that dual residency existed when there was evidence that the minor-claimant resided with more than one parent. As the *Grange* Court demonstrated, dual residency may be found even when the weight of the evidence indicates that the minor claimant resided with one parent more than the other.

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